

**REMARKS**

Claims 1-3 and 5-38 are pending. Claim 4 is cancelled. Claims 1-3, 5, 6, 19, 24, 26, 28, 29, and 32-37 are amended. Support for the amendments and additional claims is found throughout the specification and drawing, especially on pages 2, 4, 5, and 7. In view of the following amendments and remarks, Applicants respectfully request reconsideration of the application.

**The 35 U.S.C. § 112 Rejections are Moot**

A. The claims do not contain new matter.

Claims 33-35 were rejected under 35 U.S.C. § 112, first and second paragraphs. In view of the above amendments and following remarks, Applicants believe the rejection is moot and request withdrawal of the rejection.

In accord with the Examiner's suggestion, the term "occupies," which did not appear in the original claims, but was added in the prior amendment, has been removed. Additionally, the claims have been reworded to specifically point out that the adhesive forms bonding interfaces (specification page 7, line 29) of the stated thickness.

B. The claims are definite.

Claims 1-38 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In view of the following remarks, Applicants believe the rejection is moot and request withdrawal of the rejection.

Appl. No.: 09/421,605

Claim 1 has been amended with the limitations from cancelled claim 4 and those found in the specification (page 2, line 28). It is now clear that very low density polyethylene (VLDPE) has a density between 0.900 and 0.915 g/cm<sup>3</sup> and the compatibilizer has a density less than 0.900 g/cm<sup>3</sup>. The VLDPE and compatibilizer are distinct film components due to their densities in addition to having different molecular structure.

Claims 6, 19, 24, 26, 28, and 32 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for using trademarks. As stated in the prior response, Applicants have used generic language to the extent possible. However, some of the polymers of the current invention are trade secret compositions, only known by their trademarks. The manufacturers will not release their exact formulations or production methods.

In a recent Board of Patent Appeals and Interferences opinion, *Ex parte Jerry Kitten*, 1999 WL 33134953 (BPAI 1999), claims containing trademarks as a limitation to identify a particular material were held to satisfy the second paragraph of section 112. In *Kitten*, the Board held that "proprietary products identified by only their trademarks" could be incorporated as claim limitations when "product sheets for each of the aforementioned proprietary products" is filed in the record of the application. *Id.* at \*2. The Board differentiated these circumstances, (1) products identified only by trademarks and (2) applicant provides product information sheets, from *Ex parte Simpson*, 218 USPQ 1020, 1020-23, where the lack of such product information made the claims "unclear or confusing." *Id.*

Appl. No.: 09/421,605

Applicants' have included with this response an IDS including the available product information sheets for the tradeseecret polymers. Under *Kitten*, these information sheets make the claims definite as written because the limitations are neither "unclear or confusing." Applicants have defined the compositions as specifically as is possible and believe the rejection is moot in view of *Ex parte Kitten*. Withdrawal of the rejection is respectfully requested.

Claim 29 has been amended to recite "greater than about 37  $\mu\text{m}$ " as stated in the specification. As suggested by the Examiner, claims 36 and 37 have been amended to make the wording consistent.

#### **The Claims are Patentable Over the Cited Prior Art**

Claims 1, 4-5, 7-9, 20-22, 27, 29-31, 33-35 and 37 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,068,933 (hereinafter referred to as "*Shepard*"). Claims 2, 3, 7-18, 20-23, 24, 29-30 and 33-36 were rejected under 35 U.S.C. § 103(a) as being obvious over *Shepard*. Applicants respectfully traverse.

Briefly stated, Applicants' invention is a film comprising three layers of polymeric film. These outer, intermediate, and inner layers are bonded at the two resulting interfaces with one or more adhesives.

#### **§ 102. The Claims are Not Anticipated by the Prior Art**

To be anticipated, the prior art must contain each and every element of the claimed invention in a single reference. *In re Spada*, 911 F.2d 705, 709, 15 U.S.P.Q. 2d 1655 (Fed. Cir. 1990). Because *Shepard* does not teach an outer layer comprising

Appl. No.: 09/421,605

very low density polyethylene (VLDPE) and a compatibilizer (such as the ethylene alpha-olefins described above) as required in by Applicants' claim 1, *Shepard* cannot anticipate Applicants' invention. Applicants respectfully submit that *Shepard* does not anticipate the present claims.

Because *Shepard* fails to use very low density polyethylene (VLDPE) or a compatibilizer in an outer layer blend as required by all of Applicants' present claims, *Shepard* cannot anticipate them. The Examiner has provided no explanation as to how the claimed very low density polyethylene nor the claimed compatibilizer is encompassed by any of the many lists of polymeric materials recited in *Shepard*. No reference of record teaches the equivalence of any of *Shepard's* compositions with those claimed. *Shepard* cannot anticipate the present claims and the rejection should be withdrawn.

#### § 103. The Claims are Not Obvious in View of the Prior Art

The § 103 rejection should be withdrawn because the invention defined by the claims would not have been obvious in view of the cited prior art. Just as *Shepard* could not anticipate Applicants' invention, it could not have made it obvious. Unlike stated on page 7 of the current office action, *Shepard* never teaches an outer layer blend comprising a very low density polyethylene. Neither does the reference teach the use of a compatibilizer, such as an ethylene alpha-olefin with a density less than 0.900 g/cm<sup>3</sup>, in an outer layer blend. Because these components are never suggested by the reference, it cannot make the claimed invention obvious. *Shepard* fails to provide any

Appl. No.: 09/421,605

teaching how to assemble Applicants' outer layer from the plethora of polymeric materials listed.

Many polymers, prepolymers, olefins, and other polymeric materials may be purchased and combined to achieve various goals. To make Applicants' combination obvious, the examiner must provide a motivation to combine Applicants' specific components and a suggestion that such a combination would be successful. *Shepard* fails to provide Applicants' specific components. Neither does the reference provide a suggestion or motivation that very low density polyethylene, EVA, and a compatibilizer should be combined to form an outer layer, or that such a combination if it could be made, would be successful. In fact, the reference provides no teaching at all regarding how very low density polyethylene and a compatibilizer can be used to make a film. As such, the rejection should be withdrawn.

The above remarks in regard to independent claims 1, 36, and 37 apply equally to the dependent claims because the independent claims limitations are present in all dependent claims. In view of these and other differences, it cannot be said that the cited reference anticipates or would have made the Applicants' film obvious. As such, the rejection should be withdrawn.

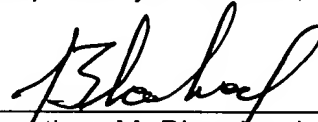
### **Conclusion**

Applicants have overcome each of the rejections. The application is therefore in condition for allowance and early notification of allowance is respectfully requested. If, for any reason, the Examiner believes that the amendments and remarks do not put the

Appl. No.: 09/421,605

claims in condition for allowance, the undersigned attorney can be reached at  
(312) 321-4898 to resolve any remaining issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Blanchard', written over a horizontal line.

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**Appendix**

1. (Amended) A multi-layer thermoformable plastic film comprising:  
an outer layer comprising a blend of a very low density ~~polyolefin~~polyethylene, ethylene vinyl acetate, and a compatibilizer,  
wherein said very low density polyethylene is an ethylene  $\alpha$ -olefin copolymer having a density between 0.900 and 0.915 g/cm<sup>3</sup> and said compatibilizer is an ethylene  $\alpha$ -olefin copolymer having a density less than 0.900 g/cm<sup>3</sup>;  
an intermediate layer comprising a mixture of nylon copolymer and an amorphous nylon;  
an inner layer comprising a polyolefin or ionomeric polymer; and  
at least one adhesive that bonds said outer, intermediate, and inner layers together.
2. (Amended) The multi-layer thermoformable film of Claim 1, wherein the outer layer comprises a blend of:  
about 30% to 50% by weight very low density ~~polyolefin~~polyethylene, based on the total weight of the outer layer;  
about 30% to 45% by weight ethylene vinyl acetate, based on the total weight of the outer layer; and  
about 10% to 24% by weight of a compatibilizer, based on the total weight of the outer layer.
3. (Amended) The multi-layer thermoformable film of Claim 1, wherein the outer layer comprises a blend of:  
about 44% by weight very low density ~~polyolefin~~polyethylene, based on the total weight of the outer layer;

about 36% by weight ethylene vinyl acetate, based on the total weight of the outer layer; and

about 15% by weight of a compatibilizer, based on the total weight of the outer layer.

4. ~~The multi-layer thermoformable film of Claim 1, wherein said very low density polyolefin is an ethylene-octene copolymer.~~

5. (Twice Amended) The multi-layer thermoformable film of Claim 1, wherein said compatibilizer is an ethylene  $\alpha$ -olefin copolymer having a density less than 0.900 g/cm<sup>3</sup> with a melting point range of 55-75° C.

6. (Amended) The multi-layer thermoformable film of Claim 1, wherein said compatibilizer is ~~Tafmer~~ TAFMER 1085.

19. (Amended) The amorphous nylon of Claim 14, wherein the amorphous nylon is ~~Selar~~ SELAR PA 3426.

24. (Amended) The multi-layer thermoformable film of Claim 1, wherein the inner layer comprises ~~Surlyn~~ SURLYN 1650.

26. (Amended) The multi-layer thermoformable film of Claim 1, wherein the inner layer comprises ~~Surlyn~~ SURLYN 1601.

28. (Amended) The multi-layer thermoformable film of Claim 1, wherein the inner layer comprises ~~Affinity~~ AFFINITY PL 1880.

29. (Amended) The multi-layer thermoformable film of Claim 1, wherein the inner layer has a thickness of greater than about ~~35~~ 37  $\mu$ m.

32. (Amended) The multi-layer thermoformable film of Claim 1, wherein the at least one adhesive comprises ~~Bynel~~ BYNEL 3095.

33. (Twice Amended) The multi-layer thermoformable film of Claim 1, wherein the at least one adhesive forms bonding interfaces between the outer layer and the intermediate layer, and between the intermediate layer and the inner layer, wherein said bonding interfaces have ~~occupies~~ a thickness of about 5  $\mu\text{m}$  to 25  $\mu\text{m}$ .

34. (Twice Amended) The multi-layer thermoformable film of Claim 1, wherein the at least one adhesive forms bonding interfaces between the outer layer and the intermediate layer, and between the intermediate layer and the inner layer, wherein said bonding interfaces have ~~occupies~~ a thickness of about 10  $\mu\text{m}$  to 20  $\mu\text{m}$ .

35. (Twice Amended) The multi-layer thermoformable film of Claim 1, wherein the at least one adhesive forms bonding interfaces between the outer layer and the intermediate layer, and between the intermediate layer and the inner layer, wherein said bonding interfaces have ~~occupies~~ a thickness of about 15  $\mu\text{m}$ .

36. (Amended) A multi-layer thermoformable plastic film comprising:  
an outer layer comprising a blend of a very low density  
~~polyolefin~~polyethylene, ethylene vinyl acetate, and a compatibilizer,  
wherein said very low density polyethylene is an ethylene  $\alpha$ -olefin copolymer having a density between 0.900 and 0.915 grams/cm<sup>3</sup>  
and said compatibilizer is an ethylene  $\alpha$ -olefin copolymer having a density less than 0.900 g/cm<sup>3</sup>;  
an intermediate layer comprising a mixture of nylon copolymer and an amorphous nylon;  
an inner layer comprising a polyolefin or ionomeric polymer; and

at least one adhesive that bonds said outer, intermediate, and inner layers together,  
wherein the outer layer comprises a blend of:  
about 30% to 50% by weight very low density ~~polyolefin~~polyethylene, based on the total weight of the outer layer;  
about 30% to 45% by weight ethylene vinyl acetate, based on the total weight of the ~~top~~outer layer; and  
about 10% to 24% by weight of a compatibilizer, based on the total weight of the outer layer.

37. (Amended) A multi-layer thermoformable plastic film comprising:  
an outer layer comprising a blend of a very low density ~~polyolefin~~polyethylene, ethylene vinyl acetate, and a compatibilizer,  
wherein said very low density polyethylene is an ethylene  $\alpha$ -olefin copolymer having a density between 0.900 and 0.915 g/cm<sup>3</sup>;  
an intermediate layer comprising a mixture of nylon copolymer and an amorphous nylon;  
an inner layer comprising a polyolefin or ionomeric polymer; and  
at least one adhesive that bonds said outer, intermediate, and inner layers together,  
wherein said compatibilizer is an ethylene  $\alpha$ -olefin copolymer having a density less than 0.900 g/cm<sup>3</sup> with a ~~MP~~melting point range of 55-75° C.